

EXHIBIT A

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF SNOHOMISH

3
4 GMAC, A DELAWARE
CORPORATION,

5 Plaintiff,

6 vs.

7 EVERETT CHEVROLET, INC., A
8 DELAWARE CORPORATION,
Et al.

9 Defendants.

Cause No. 08-2-10683-5

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11 VERBATIM REPORT OF PROCEEDINGS
12

13
14 BE IT REMEMBERED that on 11th day of April, 2009,
15 the above-entitled and numbered cause came on for
16 Hearing before JUDGE ERIC Z. LUCAS, Snohomish County
17 Superior Court, Everett, Washington.

18 A P P E A R A N C E S

19 For the Plaintiff

JOHN GLOWNEY

For the Defendant

WILLIAM WHEELER and
KARL HAUSMANN

REPORTED BY:
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1 THE COURT: All right. We are back on the record
2 in the matter of GMAC versus Everett Chevrolet. And
3 this morning's hearing was scheduled to talk about the
4 motion to amend the complaint. I've sort of changed
5 this agenda. I'm going to give you my ruling. So
6 here we go.

7 This matter has come before the Court for hearing
8 from March 17th, 2009 to April 10th, 2009. The Court
9 has heard and reviewed trial testimony, all exhibits,
10 the memorandum of counsel, the records and the files
11 herein. It is therefore ordered, adjudged and
12 decreed as follows:

13 And these are my Findings of Fact.

14 Owner, John Reggans, has been operating Everett
15 Chevrolet Inc. (Henceforth ECI) successfully in the
16 City of Everett since 1996. He started in this
17 business with an 80 percent investment from Motor's
18 Holding, a division of General Motors Company and a
19 twenty percent match of his own.

20 The program he engaged in with Motor's Holding
21 enabled the junior investor to buy out the larger
22 company interest in a certain amount of time.

23 The pro forma plan for Mr. Reggans was to
24 accomplish this task in 3.5 years. His actual
25 performance was better. He acquired one hundred

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1 percent ownership in 1999, after only two years and
2 nine months. This acquisition was achieved solely
3 through dealer profits.

4 ECI, under Mr. Reggans, has been profitable every
5 year from 1996 to 2006. The Dunn and Bradstreet
6 report filed as exhibit number 92 indicates that his
7 high year sales were approximately 40 million dollars.

8 During the late 90's Mr. Reggans testified that he
9 averaged new car sales of 70 a month from 1996 to
10 1999. In 1999, a new Chevy dealership, Speedway
11 Chevrolet, opened up as a direct competitor. After
12 this, his new car sales dropped, but he still managed
13 to average about 40 to 60 new cars sold a month.

14 In 1999, he received a working capital loan from
15 GMAC in the amount of \$500,000, and repaid it in full
16 in five years. He has had revolving line of credit
17 with GMAC since 1999, with payment terms of interest
18 only. This continued until July 2008, when GMAC
19 unilaterally demanded principal reduction payments of
20 \$10,000 a month in addition to interest.

21 Mr. Reggans testified that in 2006 ECI earned
22 \$700,000 in net profit. However, after 2006, the car
23 industry began to decline. His 2007 net profit was
24 only about \$28,000.

25 In September of 2007, Mr. Jerry Vick became GMAC

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1 branch manager for the Pacific Northwest. When Mr.
2 Vick was asked on direct examination if there were any
3 credit issues in 2007, he indicated, yes, that ECI
4 needed to expand its revolving line of credit from
5 \$500,000 to \$800,000.

6 The request was made directly between Mr. Reggans
7 and Mr. Vick. There was no problem granting this
8 request at that time. At the end of 2007, Mr.
9 Reggans also requested of Mr. Vick that GMAC help
10 finance the purchase of real estate the firm was
11 leasing. Mr. Reggans saw this as critical to the
12 profitability of his business because he was facing a
13 dramatic increase in lease payments and this was a
14 proactive action on his part.

15 The purchase of the property would avoid an
16 escalation in lease payments of nearly fifty percent.
17 Mr. Reggans made clear that this deal had to close by
18 December 31st, 2007. GMAC did not respond until May
19 of 2008. The response was a decline and was verbally
20 delivered by Mr. Vick. GMAC did not respond to this
21 request in writing.

22 On direct examination, Mr. Vick indicated that the
23 reason for the decline was no positive cash flow.
24 However, the April financial statement loss was the
25 first quarter loss of the year. Plus GMAC had just

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1 increased the revolving line of credit.

2 Lastly, the collateral is extremely valuable real
3 estate on Highway 99, Evergreen Way in Everett. The
4 property was appraised. The un rebutted testimony is
5 that the sales price was one million dollars under the
6 appraisal, as such, the Court does not find Mr. Vick's
7 answer at trial to be credible.

8 From a business standpoint, GMAC's position is not
9 reasonable. From the facts presented, GMAC appears
10 to have been dragging its feet. This delay, rather
11 than swift rejection, denies the dealer the
12 opportunity to pursue other options in a timely
13 manner. As an isolated occurrence, this fact is not
14 important. But it is important if it is a pattern of
15 behavior.

16 The April ECI financial statement showed a year to
17 date loss of \$163,042. This led to a meeting between
18 Mr. Vick and Mr. Reggans on June 10th. Mr. Vick
19 testified that the meeting basically covered all the
20 items later memorialized in his letter of July 31st,
21 2008, which is exhibit number 1. Mr. Reggans disputed
22 this vehemently in his testimony, indicating that the
23 meeting was dominated by a request for his personal
24 guarantee and that virtually none of the other topics
25 in Mr. Vick's subsequent letter were communicated in

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1 this meeting. This raises a very serious issue of
2 credibility.

3 In his court testimony, Mr. Vick indicated that he
4 could not recall Mr. Reggans' response to raising
5 these very serious issues, particularly to the request
6 for the \$800,000 cash injection. The Court finds that
7 Mr. Vick's testimony is simply not credible.

8 In the letter, Mr. Vick indicates that because of
9 the losses, ECI will need a cash injection of
10 \$800,000, Mr. Reggans's personal guarantee and
11 continue to pay promptly and faithfully. A deadline
12 was set at October 31st, 2008 to achieve these goals
13 and if that they were not achieved, GMAC promised to
14 "suspend or terminate" the dealer's wholesale credit
15 lines. After these conditions were set, a few more
16 were added.

17 One was a charge of \$500 per audit.

18 And number two was the change in the revolving line
19 of credit setting a principal reduction payment of
20 \$10,000 a month.

21 This letter is copied to Michelle Smith and her
22 only. The Court also finds it incredible that a
23 letter of this magnitude would be sent almost fifty
24 days after the meeting.

25 In the world of finance, sixty days is a lifetime.

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1 A concerned dealer would certainly want these fifty
2 days in order to meet the conditions set. Here, GMAC
3 deprived the Dealer of his time to adjust, another
4 indication of delay.

5 By his own testimony, Mr. Vick did not mention the
6 deadline in his meeting, only in the letter. The
7 entire scenario, as reported by Mr. Vick, lacks
8 credibility.

9 This letter has been construed in many different
10 ways, but in business this is known as a drop dead
11 letter. The author is communicating to the reader
12 that the relationship is over and it is just a matter
13 of time before the end. However, this letter
14 attempts to mask this intent by justifying GMAC's
15 actions based on credit trends and performance. But
16 at this point in the year, there were no trends as
17 yet. All high overhead businesses show losses at the
18 beginning of the year until they reached their break
19 even point in sales later in the year. This is
20 common knowledge. If this had been the subject of
21 oral conversation over lunch, there is no question, in
22 this Court's view, given Mr. Reggans' wide ranging
23 contacts, that he would have had a different posture.

24 But GMAC deprived him of the opportunity to make
25 the maximum use of his time by misleading him, by

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2 on a reservation of its rights. This fifty days
3 becomes a critical point later in the year.

4 What Mr. Reggans did not know is that GMAC was
5 undertaking a very sophisticated financial analysis on
6 his firm. He did not know that a metric was being
7 applied to him. Ms. Smith testified that he needed
8 to show a debt to equity ratio of three to one, yet
9 this was never told to him, even though GMAC knew they
10 had analyzed his April debt to equity ratio at over
11 9.73 to 1. There was no proof by GMAC that the cash
12 injection of \$800,000 was based on achieving this
13 three to one debt to equity ratio.

14 And in fact, Ms. Smith testified that she knew he
15 could not make this target in July because he had
16 continued to lose money. When Mr. Reggans did inject
17 \$500,000 into his business in October hoping this
18 would convince GMAC to lift the personal guarantee
19 condition, he still could only achieve a debt to
20 equity ratio of 18 to 1.

21 On questioning by the Court, Ms. Smith admitted
22 that the target cash injection of \$800,000 was no
23 longer valid in July when it was requested in writing.
24 And they did not tell him it was no longer valid. She
25 calculated that a total cash injection of \$800,000 by

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1 the October deadline, given the increased losses,
2 would only get him to a debt to equity ratio of 10.73
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3 to 1, when the metric is 3 to 1. She knew that ECI
4 could not meet GMAC goals.

5 According to GMAC, both Mr. Vick and Ms. Smith
6 engaged in detailed financial discussions with Mr.
7 Reggans about the performance of his business, yet not
8 once did they share the financial analysis with him.
9 Targets were set without any justification.
10 Deadlines were set without any notice or
11 justification. When he inquired why he was asked for
12 his personal guarantee after 12 years of doing
13 business with GMAC, he was told vaguely that it was
14 not uncommon. That was a quote, not uncommon, and
15 that "not every dealer" had to do it.

16 Ms. Smith was also not a credible witness. By her
17 own testimony she has 25 years in the business and a
18 Masters in business administration. Yet she could
19 not derive the formulas from simply reviewing the
20 financial information on instruments she has
21 purportedly used for years. She could not glean the
22 formulas without a formula handbook or a cheat sheet
23 and she could not give the Court ECI's breakeven point
24 in total sales, only in units per month. For a high
25 level unit manager, this is simply not credible.

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1 However, it is credible if her primary job is
2 collections and shutting down companies. This does
3 not require a high level financial analysis. And she
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4 testified that she was just "promoted" to high risk
5 manager. This is a credit collection term. In other
6 businesses it's called special credits. This is a
7 division of a firm that a client goes to when all
8 credit is about to be cancelled and all debts called
9 due.

10 Proof of this collection attitude is her response
11 to Mr. Reggans when he asked her why he needed to have
12 a personal guarantee. She said he has to have some
13 "skin in the game." This Court found this comment to
14 be highly insulting. It is not only insulting to a
15 person who has earned his ownership via hard work and
16 profit over a 12 year period, it is insulting based on
17 her explanation that a "personal guarantee shows level
18 of commitment." That's a quote. In the credit world
19 this is a false statement. Every single business
20 person in the world knows what a personal guarantee
21 means. It means the lowest credit rating for a
22 business. It means the business has no value. This
23 is why the personal guarantee is required, so that the
24 lender can take your house if the business fails to
25 pay its debts. In this case, it is not true that the

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1 business had no value. Motor's Holding, after its
2 own due diligence, was prepared to invest 2.5 million
3 dollars in this business. This casts doubt on the
4 requirement for a personal guarantee.

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5 Most small business people start with a personal
6 guarantee and struggle to escape this risk by building
7 the net worth of their business. For her to say this
8 in court under oath shows her lack of respect for the
9 Court, and her total lack of credibility. But it does
10 reveal her motivation. Clearly, this explanation to
11 the Court and to Mr. Reggans is the first real proof
12 of a GMAC hidden agenda.

13 Surprisingly, Mr. Pedram Davoudpour did testify
14 credibly. When the Court asked him why these actions
15 were taking place, he candidly indicated that there
16 were "red flags in the file."

17 When I asked him to identify what he read in the
18 file that was a red flag, he indicated that the letter
19 of July 31st, 2008 was the red flag. Mr. Davoudpour
20 was not using the occurrences of November or December
21 or August to impose the restrictions on ECI that he
22 was responsible for implementing, he was relying on
23 the July letter. Mr. Davoudpour's testimony affirms
24 for the Court that the requirements in the July letter
25 were false targets and were designed to create the

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1 basis for ECI's default.

2 The hidden agenda that is taking place here is a
3 working capital assault on ECI designed to manufacture
4 a default.

5 First, a target for cash injection is set that can
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1 condition or contract term. This seems to be just an
2 arbitrary action, which is not commercially
3 reasonable.
4 Next is the inventory reduction charged billed at
5 over \$170,000. This pre payment has no basis in the
6 contract. See exhibit number 3 where it says "As
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6 either not be reached, or if it is reached, will not
7 bring ECI into compliance with the policy metric of a
8 3 to 1 debt equity ratio.
9 Next is a communication to ECI that the break even
10 is units and that he needs to sell more units to meet
11 GMAC's goals. ECI is also told that they need to
12 reduce inventory. When the Court asked Ms. Smith what
13 this meant, she said, "sell more cars."
14 Next is the \$500 audit charge.
15 Then there is the \$10,000 monthly principal
16 reduction charge.
17 Then the revolving line of credit is suspended,
18 exhibit 69, while at the same time the interest rate
19 is increased from Libor plus 300 basis points to Libor
20 plus 600, an increase of one hundred percent.
21 Ms. Smith testified that all past credit decisions
22 were purportedly based on ECI's performance, but this
23 one in her letter is thinly based "market condition",
24 without indicating what metric in the market is being
25 used, without any stated relation to a specific market

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7 each vehicle is sold or leased, we will faithfully and
8 promptly remit." It comes directly out of working
9 capital without being earned. The calculation of the
10 sum has no metric and appears totally arbitrary. It
11 appears to assume depreciation of a vehicle that is
12 not being used when all depreciation rules are based
13 on use. It is even generally known that you value a
14 car based on mileage used, so this charge appears
15 arbitrary and as such is not commercially reasonable.

16 Then there is the November refusal to floor
17 unencumbered new and used vehicles at the Dealer's
18 request when it would have had maximum positive effect
19 on the Dealer in response to the Dealer's efforts to
20 be proactive and anticipate his problems.

21 Followed by that decision is the one in December to
22 allow flooring after audits found ECI to be out of
23 Trust. This action violated GMAC's own rule as
24 testified by Ms. Smith that no flooring would be done
25 once the floorplan was suspended.

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1 But in the December case, the flooring helps GMAC
2 by obtaining more of ECI's assets, and harms the
3 Dealer because only his earlier proactive approach
4 would have enabled him to avoid the Out of Trust
5 position.

6 The three day business day remit rule in this
7 context is used to assault working capital. when the

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8 business most needs flexibility, the rule is strictly,
9 if not arbitrarily, enforced. This rule is not a
10 contract term, and it is not uniform among dealers.
11 Some have a five business day remit rule. And there
12 was no testimony in the record concerning how it was
13 applied or who got three and who got five.

14 If it's not based on contract or a clearly
15 articulated policy, it is arbitrary and not
16 commercially reasonable.

17 The sales date determined by GMAC is arbitrary.
18 Pedram Davoudpour testified that when there was a
19 dispute about sales dates then they would negotiate it
20 with the Dealer. However, it was clear from the
21 testimony that there would be no negotiating with Mr.
22 Vick or Mr. Ted Modrzejewski. The date is applied in
23 an arbitrary manner because cars are considered sold
24 before the deal closes and is funded. Even known
25 unwinds are included in the audits as due and payable.

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1 This is a working capital assault, because it then
2 requires the Dealer to fund the GMAC floorplan payment
3 out of his working capital rather than out of the
4 sale. A Dealer with a five day remit will have a
5 distinct advantage here over one who has a three day
6 remit. And this is not commercially reasonable
7 because it's not based in any contract term and not on
8 any clearly articulated policy.

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9 Audits taking place on a daily basis also assault
10 working capital. All the employees who testified
11 indicated that the daily audits interfered with their
12 performance. They testified that it reduced sales.
13 Inefficient performance diminishes working capital
14 because employees must be paid who are not achieving
15 peak performance. Mr. Jaffee testified that GMAC was
16 on site interfering with the business operation from
17 November 14th, 2008 until he left on January 28th,
18 2009. He testified that during this time, "there was
19 not one day when they were not physically on the
20 premises." This is not commercially reasonable
21 behavior. He testified that customers overheard their
22 conversations when they would come into his office and
23 demand information. This testimony is contrary to
24 GMAC witnesses who said they were polite and asked
25 employees to step out. This creates a credibility

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1 question that this Court resolves against GMAC.

2 On December 4th, exhibit 56, demand on the open
3 account was made severely impacting not only working
4 capital, but the Dealer's cash position by diverting
5 and freezing these critical funds.

6 On December 15th GMAC demanded payment on all
7 credit lines with a deadline of March 13th.

8 And then surprisingly, on December 19th, just four
9 days later, GMAC demanded immediate payment of all

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10 credit lines referenced in the letter December 15th,
11 2008. These two actions coming within days of each
12 other do not make sense unless they are intended to
13 stop his investment from Motor's Holding.

14 On December 30th GMAC acquired a Temporary
15 Restraining Order that shut the business down for two
16 weeks.

17 Demand notices went to financing institutions and
18 this assault stopped all financing of sales until
19 relief was granted by the Court January 15, 2009.

20 It is unrebutted that Mr. Reggans had a
21 pre-investment contract, exhibit number 109, in place
22 that would have provided an equity cash injection into
23 his business by Motor's Holding in the amount of 2.5
24 million dollars and which was due to close on January
25 9th, 2009. It is unrebutted that Mr. Vick and Ms.

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1 Smith of GMAC, and others, knew this contract was
2 pending. With this deal, Mr. Reggans would again be a
3 junior investor in his business. However, it is also
4 undisputed that an equity investment of 2.5 million
5 dollars, just days away, would have solved all of
6 ECI's credit problems with GMAC. Motor's Holding, in
7 its refusal to close, cited this lawsuit as a basis
8 for denial.

9 Okay. So here is my analysis, and this is a
10 quote.

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11 "The law has not yet acknowledged a general
12 requirement of full disclosure of all relevant facts
13 in all business relationships but the duty to disclose
14 relevant information to contractual party can arise as
15 a result of transaction itself within the partie's
16 general obligation to deal in good faith."

17 This is from Liebergesell vs. Evans 93 Wash.2d 881.
18 And the quote is from 893. It's a 1980 case.

19 By failing to disclose the debt to equity ratio and
20 other aspects of GMAC's sophisticated financial
21 analysis, GMAC was able to create a false target for
22 the Dealer and mislead ECI about its future actions.

23 GMAC withheld information on its true targets and
24 metrics, while at the same time pushing the Dealer to
25 achieve the stated targets by trying to increase

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1 sales, while at the same time deliberately depriving
2 the Dealer of the working capital needed to reach the
3 stated targets and/or goals set for him by GMAC. By
4 so doing, GMAC leads the Dealer to behave in a way
5 that is beneficial to GMAC but detrimental to the
6 Dealer. These facts were never disclosed. These
7 facts were at all times relevant to their relationship
8 and this Court finds that GMAC had a duty to disclose
9 them. As such, failure to disclose these facts
10 constitutes a breach of the implied covenant of good
11 faith and fair dealing.

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12 In a slow market there are two ways to break-even
13 and reach a favorable debt to equity ratio. One is to
14 increase sales but the other is to reduce overhead,
15 which will reduce the firm's ability to sell.
16 Revealing the debt to equity ratio and other parts of
17 the financial analysis could make this determination
18 to reduce possible. To discuss break even analysis
19 only in units and only in increasing unit sales hides
20 this fact. Lower sales in the current climate was not
21 good for GMAC. GMAC pushed the Dealer to perform when
22 he could have reduced his efforts to obtain
23 profitability, but this would have increased his
24 inventory. Ms. Smith testified that he needed to
25 "sell more cars" to succeed. Clearly, in the current

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1 market, with all of his competitors, hers is a
2 specious conclusion.

3 The U.C.C. defines good faith in RCW 62A.9A-102(43)
4 as follows:

5 "Good faith means honesty in fact and the
6 observance of a reasonable commercial standards of
7 fair dealing."

8 In the instant case, GMAC did not conduct itself
9 honestly. There was a hidden agenda throughout the
10 time from when Mr. Vick took control until the
11 catastrophic demands in December. The goal of the
12 team from GMAC in this case was to shut down the

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13 Dealer. The mechanism was to set a false target that
14 could not be achieved and by so doing manufacture a
15 default.

16 Given the totality of GMAC's actions, this is the
17 only conclusion this Court can come to. This was a
18 hidden agenda. GMAC does not have a contractual right
19 to shut down the Dealer and put him out of business.
20 GMAC may withdraw their financing, but they must do so
21 in a commercially reasonable manner. This was not
22 done in this case. The actions taken by GMAC to
23 assault the Dealer's working capital were designed to
24 put him out of business, not merely to protect
25 collateral. If GMAC had disclosed that it did not

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1 want to do business with ECI in the future openly and
2 honestly, then he would have had recourse to
3 alternatives. But instead the Dealer was led to
4 believe his past good relationship with GMAC still
5 existed all the while secret actions were taking
6 place, which damaged his ability to perform, and these
7 actions escalated during 2008. In fact, the actions
8 of December 15th and 19th seemed designed to block his
9 financing from Motor's Holding, which closing date was
10 less than thirty days away.

11 If he had the fifty days from June 10th to July
12 31st, he may have been able to close that deal despite
13 the efforts of GMAC. Here, GMAC aligned all forces in
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14 order to make the Dealer fail. Such actions are not
15 commercially necessary or reasonable. This case is
16 the perennial problem of a false target, otherwise
17 known as "hiding the ball". If ECI had known that it
18 could never achieve the goals GMAC had set, then it
19 would have been free to pursue other options.

20 Now, GMAC quoted the case of Badgett. I am not
21 going to give the cite. But Badgett is not on point
22 because it deals with an affirmative expansion of a
23 duty of good faith by requiring cooperation. Here no
24 such expansion is contemplated or required. ECI and
25 this Court does not require GMAC to cooperate in any

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1 venture. The law only requires GMAC to be honest with
2 regard to its intentions and not attempt to
3 manufacture defaults, put pressure on a business to
4 fail, or block other contract opportunities. All
5 these things were done in this case, and all are acts
6 of bad faith.

7 The Dealer in this case has a right to know how he
8 is being evaluated. Failure to disclose this amounts
9 to having to take a test without knowing what the
10 problems are to be solved. He was constantly given
11 partial financial information and encouraged to turn
12 his inventory when doing just the opposite would have
13 made him profitable.

14 ECI sold 19 million dollars by October of 2008.
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15 with these sales, that if he had cut back his sales
16 efforts and lowered his break-even point, he could
17 have made a profit, but GMAC was pushing him to do
18 just the opposite in order to engineer default. This
19 constitutes bad faith.

20 So the conclusions of law are that this Court has
21 jurisdiction in this matter.

22 GMAC breached the contract by violating the
23 Covenant of Good Faith and Fair Dealing.

24 The request for replevin is denied.

25 And I think consistent with that, the motion to

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1 amend the complaint is also denied.

2 I don't think we need to talk about it.

3 Anybody have anything else they want to say?

4 MR. GLOWNEY: What is the Court going to do with
5 the TRO?

6 THE COURT: Well, I think that means it's over.

7 Mr. Hausmann?

8 MR. HAUSMANN: I agree, I think it was just in
9 place between the time of the inception of the case
10 and this ruling on replevin, so I think it's
11 distinguished by definition.

12 MR. WHEELER: Your Honor --

13 MR. GLOWNEY: Is the Court treating this as the
14 final ruling in this case?

15 THE COURT: The Court is treating this as the
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16 final ruling in this case.

17 MR. WHEELER: Your Honor, taking that into
18 consideration, we would request that there be a hold
19 on the bond so that we could pursue monetary damages
20 against GMAC on that bond.

21 THE COURT: I will grant that.

22 MR. GLOWNEY: Is that going to be in this case or
23 some different case?

24 THE COURT: I am not sure.

25 MR. GLOWNEY: I'm just trying to understand, if you

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1 are saying that this case is finished, then where is
2 he pursuing this claim?

3 THE COURT: Well, I thought about this to a
4 certain extent, because I know that this matter is
5 going to continue in some form. I am not quite sure
6 how. What I'm going to do is I'm going to retain
7 jurisdiction in this case for any post hearing motions
8 that relate to this replevin action.

9 And if you think that the bond relates to that, go
10 ahead and make your motion.

11 MR. HAUSMANN: Your Honor, I think just to -- for
12 interest of full explanation we do have a counterclaim
13 pending, and it has a claim for damages.

14 And I just don't -- I am not -- I'm still
15 processing your decision, I am not sure how we should
16 approach that issue through here.

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17 THE COURT: The rest of the trial?

18 MR. HAUSMANN: Yes, well you just mentioned this
19 was a final decision.

20 THE COURT: On the replevin motion.

21 MR. WHEELER: So should we file a motion for -- as
22 for readiness to proceed against the bond for the
23 monetary damages on the counterclaim?

24 THE COURT: I am not quite sure I understand that
25 either.

24

1 MR. WHEELER: We have a counterclaim against GMAC
2 for monetary damages. The bond was submitted by GMAC
3 so that in the event the replevin action was decided
4 against GMAC --

5 THE COURT: Oh, is it a replevin bond?

6 MR. HAUSMANN: It is a replevin bond.

7 MR. GLOWNEY: It is.

8 MR. WHEELER: It is. So in the event that that
9 decision was rendered against GMAC and the Dealer
10 could prove damages, the Dealer could pursue a claim
11 against that bond.

12 THE COURT: I'm just doing this off the top of my
13 head, I hadn't thought about this part. I would
14 expect that would be the second step of this action,
15 the proceeding against the bond.

16 MR. GLOWNEY: Wouldn't it be a trial on monetary
17 damages? I don't quite understand what proceeding
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18 against the bond is --

19 THE COURT: Well, the bond is replevin bond and
20 the decision on the replevin has been made.

21 MR. HAUSMANN: Just to confuse things a little bit
22 more. The first action was an injunction. What GMAC
23 filed was a replevin bond before Judge Allendoerfer.
24 We argued that was not the right type of bond. Judge
25 Allendoerfer said it's a bond, it's sufficient. I

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1 don't want to paraphrase what he said, but arguably he
2 said that was a bond to insure from damages that
3 flowed from the injunction, which I think might be a
4 different species of damages or species of claim, than
5 a replevin bond and the damages related to the
6 replevin.

7 THE COURT: Okay. What I contemplated was that
8 there was this replevin show cause action and then
9 once the decision was made here, then the other issue
10 would proceed to trial.

11 MR. HAUSMANN: Okay.

12 THE COURT: That's what I contemplated.

13 MR. HAUSMANN: Right.

14 THE COURT: But there might be some -- what I was
15 thinking about last night, is there may be need in
16 going from that step to the trial, there may be some
17 need for other types of motions, depending on the
18 ruling of this hearing, to facilitate a smooth

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19 transition. And off on the top of my head, I couldn't
20 think of anything, but that might have been because it
21 was 3:30 in the morning and I couldn't process all
22 that well then.

23 But I think that there are probably some things
24 that probably need to be done, so I will retain
25 jurisdiction for the post hearing motions. I will not

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1 retain jurisdiction for the trial, that has to go back
2 to presiding to be assigned out for trial. And that
3 trial will be on damages.

4 MR. GLOWNEY: So the injunction is lifted?

5 THE COURT: The injunction is lifted.

6 MR. GLOWNEY: So when they sell cars what do they
7 do?

8 MR. HAUSMANN: They are still contractually bound.

9 MR. WHEELER: We will pay the floorplan amount.

10 MR. GLOWNEY: Then we have \$700,000 in
11 delinquencies.

12 MR. WHEELER: The delinquencies were caused as a
13 result of your action.

14 MR. GLOWNEY: And the 130 under the TRO, we don't
15 need to debate that here, but that's a question.

16 THE COURT: I understand that is not a neat and
17 tidy situation, okay. But I can't resolve all the
18 problems at this point.

19 MR. GLOWNEY: I just want to be clear, the
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20 injunction is lifted or not.

21 THE COURT: It is lifted.

22 MR. HAUSMANN: Thank you, your Honor.

23 MR. WHEELER: Thank you, your Honor.

24 THE COURT: So I'm not quite sure what you all
25 want to do in terms of an order, but in an hour I'm

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1 going to be heading over to juvenile court.

2 Mr. Hausmann, you know where juvenile court is.

3 MR. HAUSMANN: Yes.

4 THE COURT: If you need me to sign something today,
5 I will be available over there.

6 MR. WHEELER: Yes, we do.

7 THE COURT: You just need to go over there and
8 speak with the court coordinator.

9 MR. HAUSMANN: That's down at Denny.

10 THE COURT: Have you been there lately? Just go
11 in the main front entrance, once you go through the
12 metal detector and all that, there is a little booth.

13 MR. HAUSMANN: Kiosk.

14 THE COURT: Yes, kiosk, and just ask them. I will
15 either be in courtroom one after three o'clock, or I
16 will be upstairs in staffing.

17 MR. GLOWNEY: Are you going to prepare an order or
18 do you want me to --

19 MR. HAUSMANN: We will work together.

20 MR. GLOWNEY: We need to get it entered today.

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21 THE COURT: Anything else?
22 MR. GLOWNEY: I don't think so.
23 THE COURT: Thank you. Court will be in recess.
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